

JAN 13 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BURTON H. WOLFE,

Plaintiff - Appellant,

v.

CHRISTINA DEEB; et al.,

Defendants - Appellees,

No. 05-15519

D.C. No. CV-04-05164-CRB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Burton H. Wolfe appeals pro se from the district court's judgment dismissing his civil rights action against private individuals and city officials, seeking damages for exposure to loud music and noise generated by his neighbor,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the Bambuddha Lounge. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Zimmerman v. City of Oakland*, 255 F.3d 734, 737 (9th Cir. 2001), and we affirm.

The district court properly dismissed Wolfe’s First Amendment claim because, contrary to Wolfe’s contention, the constitution does not protect a person’s interest in freedom from forced listening. *See Hill v. Colorado*, 530 U.S. 703, 717 n.24 (2000) (noting that the “right [to be let alone] is more accurately characterized as an interest that state *can* choose to protect in certain situations) (emphasis added).

The district court properly dismissed Wolfe’s claim that defendants violated due process by infringing on his liberty or property rights because Wolfe does not have a constitutional right to be free from noise. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972) (a due process claim is triggered only upon a deprivation of life, liberty or property); *DeShaney v. Winnebago County Dep’t of Social Services*, 489 U.S. 189, 195 (1989) (due process clause does not require the State to protect the life, liberty, and property of citizens against invasion by private actors).

The district court properly dismissed Wolfe’s equal protection claim because he failed to allege discrimination against members of a suspect class, or implication

of a fundamental constitutional right. *See Plyler v. Doe*, 457 U.S. 202, 216-17 (1982).

To the extent Wolfe claims judicial bias, he failed to submit evidence demonstrating a sufficient level of antagonism to require recusal. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994).

Wolfe's remaining contentions lack merit.

AFFIRMED.